

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Blue Spike, LLC,

Plaintiff,

v.

Texas Instruments, Inc., et al.,

Defendants.

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CASE NO. 6:12-cv-499 MHS

LEAD CASE

Jury Trial Demanded

**PLAINTIFF'S MOTION FOR EXPEDITED BRIEFING ON PLAINTIFF'S
MOTION TO STRIKE THE EXPERT DECLARATIONS OF JOHN SNELL
AND PROFESSOR MATTHEW TURK**

Plaintiff Blue Spike, LLC hereby move the Court to expedite the briefing schedule for Plaintiff's Motion to Strike the Expert Declarations of John Snell and Professor Matthew Turk in support of Defendants' motion for Summary Judgment.

Plaintiff Blue Spike, LLC received Defendants' expert declarations regarding indefiniteness supporting Defendants motion for summary judgment on September 9, 2014. The Court has entered the following schedule with regard to claim construction and related filings:

Deadline to exchange preliminary claim construction and extrinsic evidence (P.R. 4-2)	June 13, 2014
Deadline to file Joint Claim Construction and Prehearing Statement (P.R. 4-3)	July 9, 2014
Discovery Deadline—claim construction	August 7, 2014
Deadline to file opening claim construction brief	August 22, 2014
Deadline to file motion for Summary Judgment of Indefiniteness	September 9, 2014
Deadline to file reply to claim construction brief (P.R. 4-5(c))	September 16, 2014

Deadline to file response to motion for summary judgment of indefiniteness	September 16, 2014 ¹
Deadline to file Reply to motion for Summary Judgment of Indefiniteness	September 23, 2014 ²
Deadline to File Claim Construction Chart (P.R. 4-5(d))	September 19, 2014
Claim Construction Hearing (i.e. <i>Markman</i> hearing)	October 1, 2014

Plaintiff's opposition to Defendants' motion and response to its expert declarations is due in one week. Defendants' Reply is due the following week, and, per the schedule, Plaintiff, is apparently not permitted to file a Surrpely. The Parties' claim construction hearing is less than three weeks away, and in that time the parties will be required to finish briefing on other claim construction issues and file a P.R. 4-5(d) claim construction chart. Because of these rapidly approaching claim construction deadlines and because Plaintiff will only be permitted one opportunity to respond in briefing to Defendants' experts, Plaintiff believes it necessary for the Court to resolve the issue raised by the Motion to Strike on an expedited basis. To that end, Counsel for Plaintiffs and Defendants have met and conferred concerning the need for an expedited schedule. Plaintiff proposes the following schedule:

¹ The parties have agreed to a three-day extension in which to file responsive pleadings on this motion: Plaintiff will file its Opp'n on September 19, 2014 and Defendants will file their reply on September 26, 2014. Such order has not yet been entered.

² Currently, the schedule does not reflect that Plaintiff will have an opportunity to file a surrpely on Defendants' motion for Summary Judgment on Indefiniteness making the need that much greater to expedite responsive pleading on the motion to strike.

Plaintiff File Motion to Strike	Thursday, September 11, 2014
Defendants File Opposition to Motion to Strike	Monday, September 15, 2014
Plaintiff Files a Reply to Motion to Strike	Tuesday, September 16, 2014
Defendants File Surreply to Motion to Strike	Wednesday, September 17, 2014

Defendants are opposed to the parties filing a Reply or Surreply; Defendants do not believe the additional briefing necessary. Plaintiff reserves its right according to the Federal Rules of Civil Procedure and the Local Rules to file a Reply in support of its Motion to Strike given the serious prejudice Plaintiff will experience as a result of these expert declarations. Plaintiff is willing to grant Defendants a surreply if the Defendants or the Court deem it necessary.

Accordingly, Plaintiff respectfully requests that the Court expedite the briefing schedule for Plaintiff's Motion to Strike as set forth above.

Respectfully Submitted,

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ATTORNEYS FOR BLUE SPIKE, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email.

/s/ Randall T. Garteiser
Randall T. Garteiser

CERTIFICATE OF CONFERENCE

I certify that on behalf of Blue Spike, LLC, I, along with my colleague, Peter Brasher of the law firm Garteiser Honea, P.C., have met and conferred with counsel for Defendants, Chris Swickhammer Counsel for Viggle, Inc., Allen Gardner Counsel for Ensequence, Inc., Entropic Communications, Inc., and Shazam Entertainment, Ltd., Daren Dacus local Counsel for Facebook, Inc., Walter Lackey Counsel for Audible Magic, Corp., Attributor, Corp., Viggle, Inc., Fulcrum Biometrics, LLC, Futronic Co. Ltd., Iritech, Inc., Christopher Higgins and Alyssa Caridis Counsel for Audible Magic, Chris Thompson Counsel for Cognitec Systems Corp. and Cognitec Systems GmbH, Rita Tautkus Counsel for L-1 Identity Solutions, Inc., MorphoTrust USA, Inc., MorphoTrak, Inc. and Safran USA, Inc., Orion Armon Counsel for Facebook, and Counsel for Civolution USA, Inc., Civolution B.V., Irdeto USA, Inc., and Irdeto B.V. on September 11, 2014 regarding the relief requested herein. Furthermore, Anne Champion acting as a representative for Defendants, communicated via email the Defendants' position as described above. After having an equal opportunity to present their positions, Counsel for Plaintiff and Counsel for Defendants have reached an impasse. Counsel for Defendants have indicated that they are unopposed in part and opposed in part to Plaintiff's motion to expedite briefing.

/s/ Randall T. Garteiser
Randall T. Garteiser

